112-711

SUPREME COURT U.S.
FILED
DEC 3 1893
JAMES H. McKENNEY, Clerk.

Supreme Court of the United States.

LAZARUS SCHARFF, ET AL.,
Plaintiffs in Error,
vs.
JAMES LEVY AND ALBERT LEVY,
Defendants in Error.

No. 879.

Advanced for hearing on order to remand to State Court.

STATEMENT, ASSIGNMENT OF ERRORS AND ARGUMENT.

JOHN W. NOBLE,
JOHN C. ORRICK,
For Plaintiffs in Error.

IN THE

Supreme Court of the United States.

LAZARUS SCHARFF, ET AL.,
Plaintiffs in Error,
vs.
JAMES LEVY AND ALBERT LEVY,
Defendants in Error.

No. 879.

STATEMENT.

The plaintiffs in the original petition were James Levy and Albert Levy. The action was commenced on November 18th, 1882, and the summons was returnable to the December term of the St. Louis Circuit Court, which began on the first Monday of December, 1882. The complaint was for an alleged breach of contract by the defendants, Lazarus Scharff and Adolph Scharff. These defendants appeared, at the return term, and filed their demurrer to petition on the ground that the facts stated did not constitute a cause of action. This demurrer was argued and submitted at the December term, but taken under advisement by the Court, and was not decided until the February term, 1883, that being the term next following the December term. The demurrer was then overruled. The defendants answered

at this February term, controverting the averments of the petition. The plaintiffs thereupon applied for and obtained until March 19th to plead or move against the answer. During this period, on March 14th, still being the February term, application was made by defendants to remove the cause to the Circuit Court of the United States, for the Eastern District of Missouri. The order sought was granted by the St. Louis Circuit Court, and at the next term of the United States Court, being the March term, on motion of the plaintiffs, the cause was remanded to the State Court, because the application for removal had not been made in the State Court, as expressed, at the term there, at which such cause could be first tried. From this order of remand the defendants sued out their writ of error, and are here, therefore, as the plaintiffs in error, to reverse, if it should be reversed, this order of the United States Circuit Court.

The proceedings have been formally correct. There is no question raised as to anything else than the time at which the application for removal from the State Court should have been made.

The petition for removal states in its averments that the term at which the ~~suit was~~ January was filed ~~is~~ was the first term at which the cause could be tried, and the State Court made its order on that petition.

The defendants in error maintain that, inasmuch as the State law applicable to the Circuit Court of the City of St. Louis provides that in all suits where there is personal service, the cause shall be *triable* at the return term, and the return term for this cause was that of December, 1882, therefore that was the only term at which the cause could first be tried (in the language of the Act of Congress), and

an application at any subsequent time was too late, no matter what may have been the *condition of the cause* at the return term.

The plaintiffs in error maintain that application is not too late, if made at or before the term at which issues between the parties are made up to be tried; that such term is that at which such cause could first be tried, within the letter and spirit of the Act of Congress.

ASSIGNMENT OF ERRORS.

The plaintiffs in error say that on the record and proceedings of said Circuit Court of the United States there was manifest error, to the prejudice of said plaintiffs in error, in that,

First, said Court remanded said cause to the Circuit Court of the City of St. Louis;

Second, said Court refused to retain said cause, and proceed with the same to judgment; wherefore they pray judgment, and that they may be restored to all that they have lost by said order and judgment of said Court.

POINTS AND AUTHORITIES.

The positions of the plaintiffs in error have been assumed upon not only the best of authority, in the way of precedent, but are based on a fair construction of the Act of Congress.

Gurnee vs. The County of Brunswick, 1 Hughes, 270, Chief Justice Waite.

McLean vs. The St. Paul etc., Ry. Co., 17 Blatchford R., 367, Judge Blatchford.

Scott vs. Clinton and Springfield R. R. Co., 6 Bissell, 529–536. Judge Drummond.

Phoenix Life Insurance Co. vs. Seattle, 33 Ohio St. R., 278, 281, 282.

Deford, Hinkle & Co. vs. Mehaffy, 13 Federal Reporter, 485.

Cramer vs. Mack, 12 Federal Reporter, 805.

Babbitt vs. Clark, 103 U. S. S. C. Rep., 606.

Removal Causes, 100 U. S. S. C. Rep., 457.

The opinions we hereinafter discuss, which have been rendered in favor of the proposition we maintain, are those not only of judges of eminence, but are based upon the best of reasons. With these in view, we maintain our clients had the right to be and remain in the National jurisdiction, notwithstanding the emphatic, and we may venture to say severe, opinions of the eminent and Honorable Judges on the Circuit, quoted in our opponents' brief, who seem to consider the argument on construction of a statute greatly aided by a censorious view of the ordinary and absolutely necessary proceedings, pleadings and practice, to bring a cause to an issue that can be tried, *if had in a State Court before an application for removal.* They say the return term construction would prevent "a litigant from experimenting by *demurrers* and *motions* on the State Court, with a *view* to remain if the outlook is favorable, or to apply for a removal if that course offers a more hopeful prospect."

It is unfortunate in the discussion of a general proposition of this kind, which is to be decided, so far as we have been able to learn, in this Honorable Court, now, for the first time, to have to avoid expressions of apparent censure upon those in a like condition with our clients, to the effect that they who demur in the State Court are practicing an experiment on the Court, and ought to remain there even if the Court itself hold up the demurrer until the succeeding term; and that any motion leading to a possible delay, may be deemed instituted for that purpose solely.

Other eminent judges have thought and decided otherwise, and we shall rather stand upon our right to take care of our clients' interests by the lawful and usual means adopted in all Courts by all lawyers, than anticipate that it will be decided that demurrers are experiments and a motion a sort of professional trick.

The statute of Missouri, applicable to St. Louis, partly quoted by our opponents, contemplates that the first term may be exhausted in settling the issues to be tried. It says: "Every defendant shall demur or answer the petition on or before the third day of the term, at which he is bound to appear, *unless longer time be granted by the Court*, and in every such case, the action shall be triable at the return term." Rev. Stat., 1879, § 3514.

The demurrer was filed at the return term, and was argued and submitted. There was no censurable delay by the litigant, for the *Court* kept the question under advisement until the *February* term, and then the answer was filed, and while the *plaintiffs* were asking delay, the cause was removed.

It is beyond question that this cause was not *in point of fact* in a condition to be tried at the term before that at which it was removed. It matters not that the law gave the *jurisdiction to try* at a previous term, if it could be tried; because it could *not* be tried until the issues were made. This distinction is clear to a lawyer, a framer of issues, one who is accustomed to prepare causes for trial. There may exist a general possibility for all cases of a certain class to be tried at a return term, and yet it may be that neither one of the cases under the general rules regulating practice, pleadings and proceedings in Courts *could be tried* at such term. The word triable, in the State statute, pertains to the jurisdiction of the Court, in that it is given capacity to

try this class of cases at the return term, but still the cause, as a cause, could not be tried at such term, within the letter or spirit of the Act of Congress, if no issues of fact had then been made.

The Court must have the power to try the case, and the cause must be in a condition as a cause to be tried.

Is it not a very strained and narrow construction to say a cause without an issue, when the parties are endeavoring to make one, is nevertheless one that *could be* tried?

In Gurnee vs. The County of Brunswick, 1 Hughes, 270, Chief Justice Waite has said:

"The pleadings or statements necessary to make the "issue, are regulated by the practice in the Court where the "trial is to be had. As soon as the issue is made up, the "cause is ready for trial. The parties and the Court may not "be ready, but the cause is. The first term, therefore, at "which a cause can be tried, is the first term at which *there "is an issue for trial* An application for removal, to be in "time, must be made before or at this term."

In McLean vs. The St. Paul, etc., Ry. Co., 17 Blatchford R., 363, Judge Blatchford says:

"The term at which the cause *could be first tried* is the "term at which, under the legislation of the State and rules "of practice pursuant thereto, the cause is first triable, that "is, *subject to be tried on its merits*. On the 17th day of "March, 1879, the State Court declared, by the order of "that date, that it would proceed no further in the suit, and "that the suit was removed to this Court. This was equiva-"lent to saying it would not try the case. This state of "things *continued* until this Court, by the order of May 24, "remanded the cause to the State Court. Then, under the "State legislation and practice, the term at which the cause "could be tried was the *June term*, and at or before that

"term the new petition for removal was filed. So far, "therefore, as the question of time is concerned, the new "petition was filed in time, under the Act of 1875."

It appears that the first term at which the cause last mentioned was triable was the March term, when the first petition of removal was filed. The term at which the second order of removal was made was the *June* term, and the second petition for removal, *filed at this term, was held to be in time.*

Judge Drummond, in Scott vs. Clinton and Springfield R. R. Co., 6 Bissell, 529–536, has said:

"Could this cause have been tried or heard before this "application was made? We are required to say, upon the "facts as they appear in the record, that the cause could "not have been tried at a term before the application was "made. * * * The cause cannot be heard *until there is* "*an issue*, and in this case, therefore, it was not competent "for the Court to try the case, there being no issue before "the Court to try. And, therefore, I think that, within the "meaning of the law, a term had not elapsed during which "the cause could have been heard."

The Supreme Court of Ohio, in discussing the law, says:

"Does it mean the first term at which, under the laws "of the State and the rules of practice, the cause would "first regularly stand for trial on its merits, upon issues "which have been joined between the parties by their "pleadings, or the term at which the cause would first "have stood for trial, if neither party had been guilty of "default in pleading? * * * * As the application was "made before any issue was joined between the parties by "the pleadings, it was made before the term at which the

"cause could first be tried, within the meaning of the "statute."

Phoenix Life Insurance Co. vs. Saettle, 33 Ohio St. R., 278, 281, 282.

In Deford, Hinkle & Co. vs. Mehaffy and others, U. S. Circuit Court, W. D. Tenn., Sept. 9th, 1882, Federal Reporter, 13th Vol., 485, Judge Hammond, D. J., says:

"It is sufficient for this judgment that these parties "were still on the record, (and are yet), when the petition "for removal was filed, at a time when the cause was *not* "*ready for trial.* * * * The triable *status* of the case "does not depend on the capability of being put in a condi- "tion for trial, by the acts of the parties to bring it on, but "in actually having been put in condition *on the record* for "trial."

This Court further says: "There is nothing in Babbitt vs. Clark, 103 U. S., 606, to militate against the views above presented."

See also

Cramer vs. Mack, S. D. New York, April, 1882, 12 Federal Reporter, 805.

More cases might be accumulated, but the distinction is plain, and this Honorable Court will decide.

In the case of Babbitt vs. Clark, 103 U. S. Rep., 606, the case stood for trial *on the issues* presented by the petition and answer at the *January* term. The petition for removal was not filed until the succeeding *April* term. The cause *as a cause* could have been tried at the January term.

In the case here at bar the cause as a cause could not have been tried before it was removed.

We have quoted as above to show that the evils of delay through attempt to have the issues legally and carefully made, have not been deemed so great by many other Courts as by the Honorable Court below.

As to the hearing on the demurrer having been a trial, or *half* a trial, as asserted by our opponents, we have only to refer to the Removal Causes, 100 U. S. Rep., 457, for authority against any such proposition. There the opinion is utterly inconsistent with the construction that a *trial*, within the meaning of the Act of Congress, is a hearing on a demurrer, an answer having been subsequently filed. We do not understand that this Honorable Court intends to say in that opinion either that a demurrer is to be considered in the nature of an experiment, or that the hearing of a demurrer, previously, would have prevented a removal before trial on the merits, in the cases then before it. Unless it would, the hearing of the demurrer is no part of the trial meant by the Act of 1875.

The plaintiffs in error have been guilty of no delay; they have made their pleadings promptly. The *Court* delayed decision beyond the first term, on the demurrer; and the defendants in error were delaying the cause further, by *enlarged time to reply or move against the answer*, at the time the petition for removal was filed.

We submit, therefore, the order of the U. S. Circuit Court should be reversed, unless this Honorable Court determines to hold that in all cases the petition for removal shall be filed under the Act of 1875, at the very first term the Court has power to try the cause, no matter what may be the condition of the cause itself. If this is decided, it will in effect reinstate the old statute of 1789, because no one will venture to demur, or file a pleading that *may* be subject to demurrer, at the first term of the State Court, lest the Court

delay judgment on the question until the next term, and he thus lose his power to remove the cause; and unless he does plead at the first term, he must suffer default, or on his appearance, or within a few days thereafter, remove his cause before pleading, which is in effect the law of 1789.

We submit the order *remanding the cause* should be reversed.

John W. Noble,
John C. Orrick

NOBLE & ORRICK,
Attorneys for Plaintiffs in Error.

Charles B. Wilby
Gustavus H. Wald
of Counsel

112-711

OCT 8 1884
JAMES H. McKENNEY,
CLERK.

Supreme Court of the United States.

LAZARUS SCHARFF,
Plaintiff in Error,
vs.
JAMES & ALBERT LEVY.

No. 517

SUPPLEMENTAL BRIEF ON BEHALF OF PLAINTIFF IN ERROR.

NOBLE & ORRICK,
Att'ys for Plff. in Error.

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LAZARUS SCHARFF, *Plaintiff in Error,*

vs.

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No. 517

SUPPLEMENTAL BRIEF ON BEHALF OF PLAINTIFF IN ERROR.

NOBLE & ORRICK,

Att'ys for Pltff. in Error.

Supreme Court of the United States.

LAZARUS SCHARFF,
Plaintiff in Error,
vs.
JAMES & ALBERT LEVY.

No. 517

SUPPLEMENTAL BRIEF ON BEHALF OF PLAINTIFF IN ERROR.

In view of the recent opinion in *Alley* vs. *Nott*, 111 U. S. Supt. Ct. R., 472, published since the original briefs were filed in this cause, the plaintiff in error begs leave to distinguish this cause from that.

1st. The provision of the Revised Statutes of Missouri (1879), vol. 1, page 603, sec. 3518, is as follows:

"After a demurrer, the plaintiff may amend, *of course*, and with or without costs, as the Court may order. Upon the decision of the demurrer, the plaintiff may amend or the defendant withdraw his demurrer and answer. The amended petition, answer or reply, shall be filed within such time as the Court may prescribe."

In this we submit the present case existed, at the time of removal, under a code so essentially different as to the absolute rights of the parties to plead further, that the reasoning in *Alley* vs. *Nott*, for an affirmance, does not apply.

That case rests, in large part, upon the principle that

after the lower Court decided the demurrer, it was optional with the Court to allow a further defence.

It was not in the power of the Court below to have rendered judgment on the demurrer, in this case, without a record entry showing consent by the party, because amendment was allowed by statute, of course. It was a right granted by the law, not a privilege to be allowed by the Court.

2d. There was no *decision* of the demurrer in the present case, until the very term at which the removal was ordered. The demurrer was argued, but it was continued to the succeeding term, and then for the first time was any disposition made of it.

This separates the present case absolutely from Alley vs. Nott. For the delay here was not the delay of the parties, but of the Court. And we submit, it would not be fair to deprive the party of a removal, because the Court consumed the first term in deliberating upon the question of law involved.

If it was a trial, it was one that extended from term to term, and it cannot now be said it could have been tried at the first more than at the last term. And the action of the Court on the demurrer was not a disposition of the cause. It required consent of a party to give it any finality.

John W. Noble.

NOBLE & ORRICK,

Att'ys for Pltff. in Error.

112-711

OFFICE SUPREME COURT U.S.
FILED
NOV 12 1883
JAMES H. McKENNEY, Clerk.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1883.

LAZARUS SCHARFF, *et al.*, - *Defendants in Error.*

vs.

JAMES LEVY AND ALBERT LEVY, *Plaintiffs in Error.*

BRIEF FOR DEFENDANTS IN ERROR.

DYER, LEE & ELLIS,
Attorneys.

JOHN P. ELLIS,
Of Counsel.

ST. LOUIS: PRINTED BY THE CENTRAL LAW JOURNAL.

IN THE

Supreme Court of the United States

[No. 879.]

LAZARUS SCHARFF, *et al.*, - *Defendants in Error.*

vs.

JAMES LEVY AND ALBERT LEVY,
Plaintiffs in Error.

In support of the judgment of the Circuit Court of the United States, remanding this cause to the Circuit Court of the city of St. Louis, State of Missouri, defendants in error submit the following statement and brief:

This cause was removed to the Circuit Court of the United States, for the Eastern District of Missouri, from the Circuit Court of the city of St. Louis, in the State of Missouri, on application of the defendants, who averred that they were citizens of the State of Missouri, and that the plaintiffs were citizens of the State of Ohio. The application further averred that the term of court at which it was filed, "is the term at which said cause could be first tried, and that no trial thereof hath yet been had."

Motion was made in the Federal Court by the plaintiffs to remand the cause to the State Court, which motion was by the court sustained, defendants bring the cause to this court by writ of error.

The record shows that the suit was brought on November 18th, 1882, returnable to the December term, 1882, of the Circuit Court of the city of St. Louis, Missouri, and that the service on defendants was personal.

Under the Statutes of Missouri, the terms of the Circuit Court for the city of St. Louis, are held on the first Mondays in December, February, April, June and October.

11 Rev. Stat. Mo., page 1505, sec. 9.

The record shows the defendants appeared to the suit on the 6th day of December, 1882, at the return term, and demurred to plaintiff's petition.

At the next term, to-wit, February term, 1883, the demurrer was overruled.

Afterwards at the same term (February) defendants answered, and thereupon filed their application for removal, which was granted.

It is provided by the statutes of Missouri, applicable to the city of St. Louis, that in all suits where there is personal service, the cause "shall be triable at the return term." (2 Rev. Stat. Mo., page 1506, sec. 21.) So that this cause was triable at the December term, 1882, and the application for removal was not made until the next term of said court.

As the application for removal was under the removal act of 1875, which requires the same to be filed "before or at the term at which such cause could be first tried," and as the cause was triable under the Missouri Statute at the December term, and no application was then filed, Judge McCrary decided in accordance with the settled practice in this judicial circuit, that the application was too late.

Atlee v. Potter, 4 Dill. 559.

Murray v. Holden, 1 McCrary, 341.

In the former case Judge Dillon laid down the rule, that while there might be doubt about the question of construction when the trial term was uncertain, yet there could be no room for doubt when the State Statute expressly fixed the trial term; and whether the issues were in fact made up at such term or not, the cause could not thereafter be removed.

Says Judge Dillon:

"The conclusion we have reached has the merit of fixing a certain and definite rule as to the time in which the application for the removal of law actions in this State must be made. It has the added merit of preventing delay, which experience shows to be one of the ordinary abuses of the right of removal.

"It has also the farther merit of preventing a party from experimenting with the State court, by demurrers and motions with a view to remain if the outlook is favorable, or to apply for a removal if that course offers a more hopeful prospect."

In following this rule, Judge McCrary in Murray v. Holden, *supra*, endorsed it as follows: —

"I am disposed to adhere to it, not only because it is the rule heretofore adopted and followed, but also because I consider it a correct exposition of the statute. One of the objects of the statute of 1875, was to prevent the abuses which had been practiced under the Acts of 1866 and 1867. It was evidently the purpose of Congress to fix an earlier and a definite time, which would not permit the litigant to experiment in the State court until satisfied he would fail there and then change his forum."

The same view is indicated in

Dresden School Dist. v. Ætna Ins. Co, 66 Me. 370.
Danville B. & T. Co. v. Parks, 88 Ill. 170, 172.

In the case at bar, the defendants at the trial term joined issue with the plaintiff's petition by demurrer, on the

ground that it did not state facts sufficient to constitute a cause of action. This demurrer went to the merits of the plaintiff 's case, and challenged his right to recover at all. The demurrer was argued, submitted, and finally at the next term overruled.

Thereupon after this trial term, an answer was filed and application for removal made. But at this time the issue of law had been tried, and all the law governing plaintiffs, in maintaining their cause of action had been determined by the State court. Had no answer been filed this trial and decision would have been final.

Assuming that all issues of law had been tried and only the issue of fact remained, then removal was ordered *when the case was half tried*, and certainly not the least important half.

It was not the purpose of Congress, by the removal Act of 1875, simply to protect the trial of issues of fact. It must have been intended, not only to give the citizen of another State the advantage of an unprejudiced jury, but also the satisfaction of trying his case before an intelligent judge, who by reason of his position and tenure of office, would be free from partisan feeling and removed from local influence. I am but expressing the conviction of every lawyer of experience in Federal practice, when I assert, that a large majority of removals are asked, in order to obtain the benefit of Federal law administered by a Federal judge, rather than the uncertain advantages of a Federal jury.

When, and how far, shall the Federal courts be bound by the judgment of the State court on the issue of law? Will the removal operate to give a new trial of those questions?

If the United States courts are convinced that the plaintiff has no cause of action, it will be very embarassing to give judgment against the defendants, because the State court has said the plaintiff had a case; and this would especially be a hardship, in cases where the circuit court has final jurisdiction. Indeed, if the comity between the courts should go

thus far, every one entitled to removal, and who had procured a favorable ruling from the State courts, would instantly remove his cause, to make that ruling final. If, on the other hand, the rule should prevail that the Federal courts would not be bound by the judgment of State courts, then the looser in the latter courts would by removal, unfairly obtain a new trial of the law in his case. If the plaintiffs in error are right, one or the other of these extremes must be accepted by the Federal courts, either of which would be manifestly unjust to one or the other of the litigants.

It may be difficult, perhaps impossible to entirely avoid this dilemma, when, at the statutory trial term, after demurrer overruled, the cause is removed. But in justice it should be avoided when possible. And this may certainly be done, when the application is made after such statutory term.

It would be very easy for this court to say that Congress, when using the words "term at which such cause could be first tried," had in mind the Statutes of the several States, and meant the term at which, those statutes, not the parties, made the case triable. Such a rule would be certain, uniform, and fair for both parties.

It would give us that, of which Congress never intended to deprive us, to-wit, the benefit and effect of the judgment on demurrer in our favor.

DYER, LEE & ELLIS,

Attorneys.

JOHN P. ELLIS,

Of Counsel for Defendants in Error.

112-713

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

No. 102.

MARIA W. MATTOON, APPELLANT,

vs.

JOHN S. McGREW.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED OCTOBER 15, 1881.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

No. 102.

MARIA W. MATTOON, APPELLANT,

vs.

JOHN S. McGREW.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

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JUDD & DETWEILER, PRINTERS, WASHINGTON.

1 *2d Amended Bill. Filed Jan. 12th, 1881.*

In the Supreme Court of the District of Columbia.

MARIA W. MATTOON
vs.
JOHN T. MCGREW & FREDERICK DOUGLAS, Marshal of the Dist. of Columbia. } Eq. No. 7001.

By leave of the court first had and obtained, the complainant files this her second amended bill.

1. The complainant is a resident of the District of Columbia, and brings this suit in her own right.

2. The defendant, McGrew, is a citizen of Honolulu, in the Kingdom of Hawaii, and is sued in his own right; and the defendant, Frederick Douglas, is a citizen of the District of Columbia, and is sued as marshal of said District.

2 3. That the plaintiff is the owner in her own right in fee-simple of the following-described real estate situate in the city of Washington, and District of Columbia, and described as follows, to wit: "All of lot seventeen (17), in square No. six hundred and eighty-nine (689), and the south part of lot seven (7), in said square, commencing at the southeast corner of lot seven (7), in said square, in the city of Washington, D. C., running thence east with the south line of lot 17, in said square, thence north with the west line of said lot 17 to the northwest corner of said lot 17, thence west parallel with the south line of said lot 7 to the east line of South Capitol street; thence south along said street to the place of beginning."

Said lot No. 17 was purchased by the complainant in the year 1867 for the sum of four thousand dollars, and was conveyed to her by Richard H. Clarke, trustee, and Ferdinand E. Hassler and Elizabeth B. Hassler, his wife, by deed in fee-simple bearing date May 4th, 1867, as will more fully and at large appear by said

3 original deed, which is herewith filed, marked Exhibit ("A"), and prayed to be taken as a part of this bill.

EXHIBIT "A."

Deed. Rich'd H. Clark, Trustee. Ferdinand E. & Elizabeth B. Hassler to Maria W. Mattoon.

[$4 internal revenue stamp, cancelled.]

This indenture, made this fourth day of May, in the year of our Lord one thousand eight hundred and sixty-seven, between Richard H. Clark, of New York city, trustee, as hereinafter recited; Ferdinand E. Hassler and Elizabeth B. Hassler, his wife, of Cape Vincent, State of New York, of the first part, and Maria W. Mattoon (wife of Calvin S. Mattoon), of Washington city, D. C., of the second part.

Witnesseth: That the said parties of the first part, for and in consideration of the sum of four thousand dollars ($4,000), in lawful money of the United States to them in hand paid by the said party

of the second part, at and before the sealing and delivering
4 of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, enfeoffed, released, and conveyed, and *and* do by these presents grant, bargain, sell, alien, enfeoff, release, and convey, unto the said party of the second part, her heirs and assigns forever, the following-described real estate situate in Washington city, D. C., known as lot number seventeen (17), in square number six hundred and eighty-nine (689), of the original plat of said city of Washington, being the same premises which was conveyed by Peter Brady and wife to said Richard H. Clarke in trust for the said Elizabeth B. Hassler, wife of the said Ferdinand E. Hassler, by deed dated July 1st, A. D. 1852, recorded in liber J. A. S. 41, folio 48, register's office, District of Columbia, with full power to sell and convey the same with the assent in writing of the said Elizabeth B. Hassler, which assent to this deed is evidenced by the signature, seal, and acknowledgement of the
5 said Elizabeth B. Hassler to these presents.

Together with all the improvements, ways, easements, rights, privileges, and appertenances to the same belonging or in any wise appertaining, and all the remainders, reversions, rents, issues, and profits thereof; and all the estate, right, title, interest, claim, and demand, either at law or in equity, or otherwise however, of the said parties of the first part, of, in, to, or out of the said piece or parcel of ground and premises: To have and to hold the said piece or parcel of ground and premises and appertenances unto the said party of the second part, her heirs and assigns, to her and their sole use, benefit, and behoof, forever.

And the said Ferdinand E. Hassler, for himself, his heirs, executors, and administrators, does hereby covenant, promise, and agree to and with the said party of the second part, her heirs and assigns, that he of the said parties of the first part, and his heirs, shall
6 and will warrant and forever defend the said piece or parcel of ground and premises and appurtenances unto the said party of the second part, her heirs and assigns, from and against the claims of all persons claiming or to claim the same, or any part thereof, by, from, under, or through him, them, or any person whomsoever.

And further, that they, the said parties of the first part, and their heirs, shall and will, at any and at all times hereafter, upon the request and at the cost of the said party of the second part, her heirs or assigns, make and execute all such other deed or deeds, or other assurance in law, for the more certain and effectual conveyance of the said piece or parcel of ground and premises and appurtenances unto the said party of the second part, her heirs or assigns, as the said party of the second part, her heirs or assigns, or any counsel learned in the law, shall advise, devise, or require.

7 In testimony whereof, the said parties of the first part have hereunto set their hand and seal on the day and year first hereinbefore written.

FERDINAND E. HESSLER. [SEAL.]
RICH'D H. CLARKE, *Trustee.* [SEAL.]
ELIZABETH B. HASSLER. [SEAL.]

Signed, sealed, and delivered in the presence of—
MARTIN RANNSEY.
A. COOPER.

STATE OF NEW YORK, *County of Jefferson:*

We, Ward E. Ingalls, Jacob Berringer, justices of the peace in and for the county aforesaid, in the said State, do hereby certify that Ferdinand E. Hassler & Elizabeth B. Hassler, parties to a certain deed bearing date on the fourth day of May, A. D. 1867, and hereto annexed, personally appeared before us in the capacity aforesaid, the said Elizabeth B. Hassler and Ferdinand E. Hassler being personally well known to us to be the persons who
8 executed the said deed, and acknowledged the same to be their act and deed; and the said Elizabeth B. Hassler being by us examined privily and apart from her husband, and having the deed aforesaid fully explained to her, acknowledged the same to be her act and deed, and declared that she had willingly signed, sealed, and delivered the same, and that she wished not to retract it.

Given under our hand and our seal, this fourth day of May, A. D. 1867.

[SEAL.] JACOB BERINGER,
Justice of the Peace.

[SEAL.] W. E. INGALLS, *J. P.*

STATE OF NEW YORK, } *ss:*
Jefferson County, Clerk's Office, }

I, Dexter Wilder, clerk of the county of Jefferson, and of all the courts of record in and for said county, do hereby certify that Jacob Beringer & W. E. Ingalls, Esq's, whose names are subscribed
9 to the certificate of proof or acknowledgement of the annexed instrument and thereon written were, at the time of taking such proof or acknowledgement, justices of the peace in and for said county, residing in the said county, duly authorized to take the same; that I am well acquainted with the handwriting of said justices and verily believe that the signatures to the said certificate of proof or acknowledgement are genuine.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said county and courts thereof, this 7th day of May, 1867.

[SEAL.] D. WALDER, *Clerk,*
By A. J. SHELLY, *Dep. Clerk.*

[Stamp, 5 cents.]

CITY & COUNTY OF NEW YORK, } *ss:*
State of New York, }

I, Albert Cardozo, one of the judges of the court of common pleas in and for the city and county aforesaid, in the State of New
10 York, do hereby certify that Richard H. Clarke, a party to a certain deed, bearing date on the 4th day of May, 1867, and hereto annexed, personally appeared before me in my city aforesaid, the said Richard H. Clarke being personally well known to

me as the person who executed said deed, and acknowledged the same to be his act and deed.

Given under my hand and seal, the 13th day of May, A. D. 1867.

ALBERT CARDOZO, [SEAL.]
Judge Court C. P.

I, Nathaniel Jarvis, Jr., clerk of the court of common pleas for the city and county of New York, said court being a court of record, do hereby certify that Albert Cardozo, before whom the annexed acknowledgement was taken, was, at the time of taking the same, a judge of the said court of common pleas, duly elected and sworn, and duty authorized to take the same, and that full faith and credit are due to his official acts.

11 I further certify that the signature of said judge to the certificate of such acknowledgement is genuine.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said court, the 13th day of May, 1867.

[SEAL.] NATH'L JARVIS, JR., *Clerk.*

[Stamp, 5 cents.]

Endorsement: Deed. Rich'd H. Clark, trustee. Ferdinand E. & Elizabeth B. Hassler to Maria W. Mattoon. Exhibit (A). Received for record and recorded on the 16 day of May, A. D. 1867, in liber E. C. E. No. 5, folio 360, one of the land records for Washington county, in the Dist. of Col., & ex'd. E. C. Eddie, register.

12 And the part of lot No. 7, in square No. 689, was purchased by complainant from James Adams, and was conveyed to her by said Adams and wife by deed in fee-simple, bearing date January 18th, 1868, as will more fully appear by said deed herewith filed, marked Exhibit (B), and which it is prayed may be taken as a part of this bill. The consideration which complainant paid for the last-mentioned piece of ground was one hundred and fifty dollars.

13 EXHIBIT B.

Deed. James Adams and wife to Maria W. Mattoon.

[Stamps, 50 cts.]

This indenture, made this eighteenth day of January, in the year of our Lord one thousand eight hundred and sixty-eight, between James Adams and Caroline H., his wife, both of Washington, D. C., parties of the first part, and Maria W. Mattoon, of the same place, party of the second part. Witnesseth, that the said parties of the first part, for and in consideration of the sum of one hundred and fifty ($150) dollars in lawful money of the United States, to them in hand paid by the said party of the second part at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, bargained, sold, aliened, enfeoffed, released, and conveyed, and do by these presents grant, bargain, sell, alien, enfeoff, release, and convey, unto the said party of the second part, her heirs and assigns forever, all that certain piece or parcel of

14 ground situate in the city of Washington, D. C., & known & described as follows: Commencing for the same at the southwest

corner of lot numbered seven (7), in square number six hundred & eighty-nine, in said city of Washington, D. C., running thence east with south line of said lot (7) seven to the west line of lot numbered seventeen (17), in said square (No. 689); thence north with west line of said lot No. 17 to the northwest corner of said lot seventeen (17); thence west paral-el with south line of said lot number seven (7) to east line of South Capitol street, thence south along line of said street to place of beginning.

Together with all the improvements, ways, easements, rights, privileges, and appurtenances to the same belonging or in any wise appertaining; and all the remainders, reversions, rents, issues, and profits thereof; and all the estate, right, title, interest, claim, and demand, either at law or in equity, or otherwise however, of
15 the said parties of the first part, of, in, to, or out of the said piece or parcel of ground and premises.

To have and to hold the said piece or parcel of ground and premises and appurtenances unto the said party of the second part, her heirs and assigns, to her & their sole use, benefit, and behoof, forever.

And the said James Adams and Caroline H., his wife, parties of the first part, for their heirs, executors, and administrators, do hereby covenant, promise, and agree to and with the said party of the second part, her heirs and assigns, that they, the said parties *for* the first part, and their heirs, shall and will warrant and forever defend the said piece or parcel of ground and premises and appurtenances unto the said party of the second part, her heirs and assigns, from and against the claim of all persons claiming or to claim the same, or any part thereof, by, from, under, or through them or any of them.

And further, that they, the said parties of the first part, and
16 their heirs, shall and will, at any and at all times hereafter, upon the request and at the cost of the said party of the second part, her heirs or assigns, make and execute all such other deed or deeds or other assurance in law, for the more certain and effectual conveyance of the said piece or parcel of ground and premises and appurtenances unto the said party of the second part, her heirs or assigns, as the said party of the second part, her heirs or assigns, or her or their counsel learned in the law, shall advise, devise, or require.

In testimony whereof, the said parties of the first part have hereunto set their hands and seals, on the day and year first hereinbefore written.

JAS. ADAMS. [SEAL.]
C. H. ADAMS. [SEAL.]

Signed, sealed, and delivered in the presence of—
J. F. CALLAN.

17 DISTRICT OF COLUMBIA, } ss:
County of Washington, }

I, John F. Callan, a notary public in and for the county aforesaid, in the said District, do hereby certify that James Adams and

Caroline H. Adams, his wife, parties to a certain deed, bearing date on the 18th day of January, A. D. 1868, and hereto annexed, personally appeared before me in the county aforesaid, the said James Adams and Caroline H. Adams being personally well known to me to be the persons who executed the said deed, and acknowledged the same to be their act and deed; and the said Caroline H. Adams, being by me examined privily and apart from her husband, and having the deed aforesaid fully explained to her, acknowledged the same to be her act and deed, and declared that she had willingly signed, sealed, and delivered the same, and that she wished not to retract it.

Given under my hand and notarial seal, this 18th day of January, A. D. 1868.

[SEAL.] JOHN F. CALLAN,
Notary Public.

18 Endorsement: Deed. James Adams & wife to Maria W. Mattoon. Exhibit (B). Received for record on the 22d day of January, A. D. 1868, and recorded in liber E. C. E. No. 24, folio 464, &c., one of the land records for Washington county, in the Dist. of Columbia. E. C. Eddie, register.

19 4. The complainant is the wife of Calvin S. Mattoon, to whom she was lawfully married in the year 1844; but she says that said real estate did not, nor did any part of it, come to her by gift or conveyance from her husband, nor was it bought with his money, means, or credit. It was purchased and entirely paid for her by her own separate means, in which her said husband had no interest whatever.

5. The complainant, in 1873, discovering that the legal title to said lot No. 17 was outstanding in the heirs of one Johnson Hellen at the time she purchased said lot, and was still in said heirs, filed a bill in equity in this honorable court, on the 27th day of
20 March, 1873, in her own name, setting forth that said property was her sole and separate estate, and that the legal title thereto was outstanding in the heirs of said Johnson Hellen. That one R. H. Clarke, trustee for F. E. Hassler, from whom the plaintiff had derived her title to said lot in 1852, executed a deed of trust thereon to said Johnson Hellen, then in life, and to his heirs and assigns, to secure a certain indebtedness to one Peter Brady; that said indebtedness had been fully paid and satisfied, whereby the plaintiff grantees became entitled to a reconveyance of said premises, but that said reconveyance was not made by the said Johnson Hellen in his lifetime, and praying the court to make such order as justice might require. In said cause such proceedings were thereafter had in said court that a final decree was entered therein on the 25th day of June, 1874, decreeing the defendant in said cause to
21 make to the plaintiff a deed of release for said property, and upon failure to do so, that said decree should operate to such release. All of which will more fully and at large appear by reference to the files in said cause No. 3137 still remaining in this honorable court, which are prayed to be taken as part of this bill.

6. On the 10th day of January, 1868, the complainant joined with her husband in making a deed of trust to one Alexander Johnson, to secure an indebtedness of $2,000 to Gustavus F. Jockwick, on said lot No. 17. By said deed the said Calvin S. Mattoon conveyed all his estate, right, title, interest, and claim, either at law or in equity, or otherwise however, in said lot No. 17, as will more fully and at large appear by reference to said original deed of trust, marked Exhibit (C), herewith filed and made part of this bill.

22 EXHIBIT "C."

Deed of Trust. C. S. Mattoon & Maria W. Mattoon to Alexander Johnston, Trustee.

[$2 internal revenue stamp cancelled.]

This indenture, made this tenth day of January, in the year of our Lord one thousand eight hundred and sixty-eight, between Calvin S. Mattoon and Maria W. Mattoon, his wife, of Washington city, District of Columbia, parties of the first part, and Alexander Johnston, trustee, of the same place, party of the second part.

Whereas the said Calvin S. Mattoon is justly indebted unto Gustavus F. Jockwick in the sum of two thousand dollars ($2,000), as evidenced by said Mattoon's note, bearing even date herewith, payable to the order of said Jockwick, and due in three years after date (said note not drawing interest).

The note which this mortgage is given to secure is this day paid to me by E. B. Weston.

Dec. 27, 1871. N. DUNNING.

23 Now, therefore, this indenture witnesseth, that the said parties of the first part, for and in consideration of the premises aforesaid, and further, the sum of one dollar, in lawful money of the United States to them in hand paid by the said party of the second part, at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, enfeoffed, released, and conveyed, and do by these presents grant, bargain, sell, alien, enfeoff, release, and convey, unto the said party of the second part, his heirs and assigns, forever, the following-described real estate, situate in Washington city, District of Columbia, known as lot number seventeen (17), in square number six hundred and eighty-nine (689), of the original plat of said city of Washington.

Together with all the improvements, ways, easements, rights, privileges, and appurtenances to the same belonging or in
24 any wise appertaining, and all the estate, right, title, interest, and claim, either at law or in equity, or otherwise however, of the said parties of the first part, of, in, to, or out of the said piece or parcel of ground and premises.

To have and to hold the said piece or parcel of ground and premises and appurtenances unto and to the use of the said party of the second part, his heirs and assigns, forever.

In and upon the trusts, nevertheless, hereinafter mentioned and declared, that is, in trust to permit the said parties of the first part, their heirs or assigns, to use and occupy the said described premises, and the rents, issues, and profits thereof to take, have, and apply to and for their sole use and benefit until default be made in the payment of said note, or any proper cost, charge, commission, half commission, or expense in and about the same. And upon the full payment of all of said note and all other proper costs, charges,
25 commissions, half commissions, and expenses, at any time before the sale hereinafter provided for, to release and reconvey the said described premises unto the said parties of the first part, their heirs or assigns, at their cost.

And upon this further trust, that upon default being made in the payment of the said note or any proper cost, charge, commission, half commission, or expense in and about the same, then and at any time thereafter to sell the said piece or parcel of ground and premises at public auction upon such terms and conditions, and at such time and place, and after such previous public advertisement, as the said party of the second part or his heirs in the execution of this trust shall deem advantageous and proper; and to convey the same in fee-simple to the purchase- or purchasers thereof at his, her, or their cost and expense, and of the proceeds of said sale or sales, first, to pay all proper costs, charges, and expense, and to retain
26 as compensation a commission of five per cent. on the amount of the said sale or sales; secondly, to pay whatever may then remain unpaid of the said note and the interest thereon, whether the same shall be due or not; and, lastly, to pay the remainder, if any, to said parties of the first part, their heirs or assigns.

In testimony whereof, the said parties of the first part have hereunto set their hands and seals, on the day and year first hereinbefore written.

CALVIN S. MATTOON. [SEAL.]
MARIA W. MATTOON. [SEAL.]

Signed, sealed, and delivered in presence of—
JOHN D. BLOOR.
JOHN S. HOLLINGSHEAD.

DISTRICT OF COLUMBIA, }
County of Washington, } *ss:*

I, John S. Hollingshead, a notary public in and for the county aforesaid, in the said district, do hereby certify that Calvin S.
27 Mattoon and Maria W. Mattoon, his wife, parties to a certain deed, bearing date on the tenth day of January, A. D. 1868, and hereto annexed, personally appeared before me in the county aforesaid, the said Calvin S. Mattoon and Maria W. Mattoon being personally well known to me to be the person who executed the said deed, and acknowledged the same to be their act and deed; and the said Maria W. Mattoon being by me examined privily and apart from her husband, and having the deed aforesaid fully explained to her, she acknowledged the same to be her act and deed, and declared that

she had willingly signed, sealed, and delivered the same, and that she wished not to retract it.

Given under my hand and notarial seal, this eleventh day of January, A. D. 1868.

[SEAL.] JOHN S. HOLLINGSHEAD,
Notary Public.

28 Endorsement: Deed of trust. C. S. Mattoon & Maria W. Mattoon to Alexander Johnston, trustee. (C.) Received for record on the 13th day of January, A. D. 1868, and recorded in liber E. C. E. No. 26, folio 152, one of the land records for Wash. county, in the Dist. of Col., and examined by E. C. Eddie, register.

29 The money secured by said trust deed having been fully paid the said Alexander Johnson, trustee therein, on the 10th day of October, 1872, by the consent of the said Calvin S. Mattoon, reconveyed said lot No. 17 to this complainant above, which said reconveyance was accepted by complainant with the consent and approval of her said husband, who never claimed or asserted any interest or right of any kind in the property described in this amended bill whatever. The said original deed of release herewith filed, marked "Exhibit D," and it is prayed the same may be taken as part of this bill.

30 EXHIBIT D.

Deed of Release. Alexander Johnston, Trustee, to Maria W. Mattoon.

This indenture, made this tenth day of October, in the year of our Lord one thousand eight hundred and seventy-two, between Alexander Johnson, trustee of the city of Washington, District of Columbia, trustee of the first part, and Maria W. Mattoon, of the same place, party of the second part.

Whereas Calvin S. Mattoon and Maria W. Mattoon, his wife, heretofore made and executed a certain deed of trust, bearing date on the tenth day of January, in the year eighteen hundred and sixty-eight, and thereby conveyed to the said party of the first part, and to his heirs and assigns, all the following described real estate situate, lying, and being in the city of Washington, District of Columbia, known as lot numbered seventeen (17), in square numbered six hundred and eighty-nine (689) of the original plat of said city of Washington, in trust, for the purpose of securing Gustavus F. Jockwick a certain sum of money said Calvin S. Mattoon and

31 Maria W. Mattoon owed to him. Reference to said deed recorded in liber No. 26, folio 152, one of the land records for Washington county, District of Columbia, reference to which will more fully and at large will appear;

And whereas the said debt is fully paid and discharged, as is evidenced by the notes presented to me cancelled, the said party of the second part is thereby entitled to a reconveyance of said described premises, and to have the same released and discharged of and from all lien, claim, demand, or incumbrance by reason of said deed of trust, or anything therein contained:

Now, therefore, this indenture witnesseth, that the said parties of the first part, trustee as aforesaid, for and in consideration of the premises aforesaid, and, further, the sum of one dollar, lawful money of the United States, to him now in hand paid by the said party of the second part at and before the sealing and delivery of these
32 presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, released, and conveyed, and do by these presents grant, bargain, sell, release, and convey unto the said party of the second part, her heirs and assigns, forever, all the herein described premises, and all the rights, privileges, and appurtenances to the same belonging, or in anywise appertaining:

To have and to hold the same unto and to the use of the said party of the second part, her heirs and assigns, forever, as in her first and former estate, free, released, and disharged of and from all lien, claim, or incumbrance by reason of said deed of trust.

In testimony whereof, the said party of the first part, as trustee as aforesaid, has hereunto set his hand and seal, on the day and year first hereinbefore written.

ALEXANDER JOHNSTON. [SEAL.]

Signed, sealed, and delivered in the presence of—
ALEXANDER T. GRAY.
A. D. ROBINSON.

33 DISTRICT OF COLUMBIA, }
County of Washington, } *set:*

I, Alexander T. Gray, justice of the peace in and for the District and county aforesaid, do hereby certify that Alexander Johnston, trustee, party to a certain deed bearing date on the tenth day of October, A. D. 1872, and hereto annexed, personally appeared before me in said county, and the said Alexander Johnston being personally well-known to me to be the person who executed said deed, and acknowledged the same to be his act and deed.

Given under my hand and seal, this twenty-second day of March, A. D. 1873.

ALEXANDER T. GRAY, [SEAL.]
Justice of the Peace.

34 Endorsement: Deed of release. Alexander Johnston, trustee, to Maria W. Mattoon. (D.) Received for record on the 22d day of March, A. D. 1873, and recorded in liber No. 712, folio 347, one of the land records for Washington county, in the District of Columbia, and examined by S. Wolf, recorder.

35 7. On the 31st day of December, 1874, the complainant above executed a deed of trust to one James A. Tait to secure the payment of five thousand dollars to one James A. Brown, a deed of Robert Brown, adm'r, which indebtedness was for money borrowed by complainant and expended upon her said premises, as will more fully appear by reference to said original deed, herewith filed, marked Exhibit (E), and which it is prayed may be taken as part of this bill.

36 EXHIBIT (E).

Deed of Trust. Maria W. Mattoon to James A. Tait.

This indenture, made this thirty-first day of December, in the year of our Lord one thousand eight hundred and seventy-four, between Maria W. Mattoon, of the city of Washington and District of Columbia, of the first part, and James A. Tait, of the same city and District, of the second part. Whereas the said Maria W. Mattoon is justly indebted unto James A. Brown, administrator of the estate of the late Robert Brown, of the said city and District, in the sum of five thousand dollars, current money of the United States, for which amount she has given her one promissory note, bearing even date herewith, and payable to the order of the said James A. Brown, administrator, in five years after date, with interest at the rate of ten per cent. per annum till paid, interest payable quarterly;

37 And whereas the said party of the first part is desirous to secure the full and punctual payment of the said note, with all interest and costs that may accrue thereon, and is willing to execute these presents:

Now, therefore, this indenture witnesseth, that the said party of the first part, for and in consideration of the premises aforesaid, and further the sum of one dollar, in lawful money of the United States, to her in hand paid by the said party of the second part, at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, bargained, sold, aliened, enfeoffed, released, and conveyed, and doth, by these presents grant, bargain, sell, alien, enfeoff, release, and convey unto the said party of the second part, his heirs and assigns, all those pieces or parcels of ground in the city of Washington and District of Columbia, and known upon

38 the plat or plan of said city as the whole of lot numbered seventeen (17), and part of lot seven (7), in square numbered six hundred and eighty-nine (689). The said part of lot seven (7) being described as follows: Commencing for the same at the southwest corner of lot numbered seven (7), in square numbered six hundred and eighty-nine, in said city of Washington, D. C., running thence east, with south line of said lot seven (7), to the west line of lot numbered seventeen (17), in said square No. 689; thence north, with west line of said lot No. 17, to the northwest corner of said lot seventeen (17); thence west, parallel with south line of said lot numbered seven (7), to east line of South Capitol street; thence south along line of said street to the place of beginning.

Together with all the improvements, ways, easements, rights, privileges, and appurtenances to the same belonging, or in any wise

39 appertaining, and all the estate, right, title, interest, and claim either at law or in equity, or otherwise however, of the said party of the first part, of, in, to, or out of the said described real estate and premises.

To have and hold the said described real estate and premises and appurtenances unto and to the use of the said party of the second part, his heirs and assigns.

In and upon the trusts nevertheless, hereinafter mentioned and

declared, that is, in trust to permit the said party of the first part, her heirs or assigns, to use and occupy the said described premises, and the rents, issues, and profits thereof to take, have, and apply to and for her and their sole use and benefit until default be made in the payment of said promissory note or any proper cost, charge, commission, half-commission, or expense in and about the same.

And upon the full payment of all of said note and the interest thereon, and all other proper costs, charges, commissions, half-commissions, and expenses, at any time before the sale hereinafter
40 provided for, to release and reconvey the said described premises unto the said party of the first part, her heirs or assigns, at her or their cost.

And upon this further trust, that upon default being made in the payment of the said promissory note, or interest on the same, or any proper cost, charge, commission, half-commission, or expense in and about the same, then, and at any time thereafter, to sell the said described real estate and premises, at public auction, upon such terms and conditions, and at such time and place, and after such previous public advertisement, as the said party of the second part, his heirs or the trustee acting in the execution of this trust, shall deem advantageous and proper; and to convey the same in fee-simple to, and at the cost of the purchaser or purchasers thereof, who shall not be required to see to the application of the purchase-money; and
41 of the proceeds of said sale or sales, first, to pay all proper costs, charges, and expenses, and to retain as compensation a commission of five per cent. on the amount of the said sale or sales; secondly, to pay whatever may then remain unpaid of the said note and the interest thereon, whether the same shall be due or not; and, lastly, to pay the remainder, if any, to said party of the first part, her executors, administrators, or assigns.

And the said party of the first part doth hereby agree, at her own cost, during all the time wherein any part of the matter hereby secured shall be unpaid or unsettled, to keep the said improvements insured against fire, in the name and to the satisfaction of said party of the second part, who shall pay whatever may be received therefrom to the payment of the matter hereby secured, whether due or not; and that upon any default or neglect to insure, any party secured hereby may have said improvements insured and the
42 expense thereof shall be a charge hereby secured and bear like interest, as the matter secured.

In testimony whereof, the said party of the first part has hereunto set her hand and seal, on the day and year first hereinbefore written.

MARIA W. MATTOON. [SEAL.]
C. S. MATTON. [SEAL.]

Signed, sealed, and delivered in the presence of—
JAS. A. TAIT,
H. S. BUNDY.

DISTRICT OF COLUMBIA, *County of Washington*, } ss:

I, James A. Tait, a notary public in and for the said county, in

said District, do hereby certify that Maria W. Mattoon, of Washington city, District of Columbia, party to a certain deed bearing date on the thirty-first day of December, A. D. 1874, and hereto an-
43 nexed, personally appeared before me, in said county, the said Maria W. Mattoon, being personally well known to me to be the person who executed the said deed, and acknowledged the same to be her act and deed.

Given under my hand and my notarial seal, this thirty-first day of December, A. D. 1874.

[SEAL.] JAS. A. TAIT,
Notary Public.

Receipt of Record.

Received for record on the 2nd day of January, A. D. 1875, at 10.20 o'clock a. m., and recorded in liber No. 771, folio 138, one of the land records for the District of Columbia, and examined by—

S. WOLF, *Recorder.*
GEO. F. SCHAYER, *Dep.*

44 DISTRICT OF COLUMBIA, }
County of Washington, } *ss:*

I, James A. Tait, a notary public in and for said District aforesaid, certify that C. S. Mattoon, husband of Maria W. Mattoon, party to a certain deed bearing date on the thirty-first day of December, 1874, and hereto annexed, personally appeared before me in the county aforesaid, and being personally well known to me to be the person who executed the said deed, and acknowledged the same to be his act and deed.

Given under my hand and notarial seal, this first day of July, 1875.

[SEAL.] JAS. A. TAIT,
Notary Public.

2nd Receipt of Record.

Received for record May 26, 1880, and recorded in liber No. 941, folio 408 *et seq.*, one of the land records for the District of Columbia, and examined by—

GEO. A. SHERIDAN, *Recorder.*

45 And on the 4th of January, 1875, complainant made another deed of trust upon said premises to one George W. Shockey to secure the payment of the sum of $2,043.27 to one H. S. Bundy; this indebtedness was also for money borrowed by complainant (a certified copy of said last-named deed of trust is herewith filed, marked Exhibit (F), which it is prayed may be taken as a part of this bill.)

46 EXHIBIT F.

Copy.

Maria W. Mattoon to George W. Shockey. Trust.

Liber No. 769 folio 477, *et seq.* Recorded January 4th, 1875, 2 p. m.

This indenture, made this fourth day of January, in the year of our Lord one thousand eight hundred and seventy-five, between Maria W. Mattoon, of the city of Washington, District of Columbia, of the first part, and George W. Shockey, of the second part. Whereas Maria W. Mattoon is justly indebted unto H. S. Bundy, of the State of Ohio, in the sum of twenty hundred forty-three & $\frac{27}{100}$ dollars ($2,043$\frac{27}{100}$), evidenced by the promissory note of the said Maria W. Mattoon, of even date herewith, due and payable five years after the date thereof, with interest at the rate of ten per cent per annum after due until paid, the interest payable annually after the maturity of the said note at the rate aforesaid. Now, therefore,

47 this indenture witnesseth, that the said party of the first part, for and in consideration of the premises aforesaid, and, further, the sum of one dollar in lawful money of the United States to her in hand paid by the said party of the second part, at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, bargained, sold, aliened, enfeoffed, released, and conveyed, and does by these presents grant, bargain, sell, alien, enfeoff, release, and convey, unto the said party of the second part all that certain piece or parcel of ground lying and being in said city of Washington, District of Columbia, described as follows: Lot numbered seventeen (17), in square numbered six hundred and eighty-nine (689); also the following described ground, being a part of lot numbered seven (7), in said square numbered six hundred and eighty-nine (689), commencing for the same at the

48 southwest corner of said lot, running thence east with the south line of said lot to the west line of lot seventeen (17); thence north with the west line of said lot to the northwest corner of said lot seventeen; thence west parallel with south line of lot seven (7) to east line of South Capitol street; thence south along said line of said street to the place of beginning, together with all the improvements, ways, easements, rights, privileges, and appurtenances to the same belonging or in any wise appertaining, and all the estate, right, title, interest, and claim, either at law or in equity, or otherwise however, of the said party of the first part, of, in, to, or out of the said pieces or parcels of ground and premises; to have and to hold the said pieces or parcels of ground and premises and appurtenances unto and to the use of the said party of the second part, his heirs or assigns, in and upon the trusts, neverthe-

49 less, hereinfter mentioned and declared, that is, in trust to permit the said Maria W. Mattoon, her heirs or assigns, to use and occupy the said described premises and the rents, issues, and profits thereof to take have and apply to and for her sole use and benefit until default be made in the payment of said sum of

money, or part thereof, or any proper cost, charge, commission, half commission, or expense in and about the same; and upon the full payment of all of said sum and the interest thereon, and all other proper costs, charges, commissions, half commissions, and expenses at any time before the sale hereinafter provided for, to release and reconvey the said described premises unto the said Maria W. Mattoon, her heirs or assigns, at her cost. And upon this further trust, that upon default being made in the payment of the said sum of money or part thereof, or any proper cost, charge, commission, half commission, or expense in and about the same,
50 then and at any time thereafter to sell the said pieces or parcels of ground and premises at public auction, upon such terms and conditions, and at such time and place, and after such previous public advertisement as the said party of the second part or his assigns or heirs in the execution of this trust shall deem advantageous and proper, and to convey the same in fee-simple to the purchaser or purchasers thereof at his, her, or their cost and expense, and of the proceeds of said sale or sales, first, to pay all proper costs, charges, and expenses, and to retain as compensation a commission of five per cent. on the amount of the said sale or sales; secondly, to pay whatever may then remain unpaid of the said sum and the interest thereon, whether the same shall be due or not; and, lastly, to pay the remainder, if any, to said Maria W. Mattoon, her heirs or assigns.

In testimony whereof, the said party of the first part has
51 hereunto set her hand and seal on the day and year first hereinbefore written.

MARIA W. MATTOON. [SEAL.]

Signed, sealed, and delivered in the presence of—
B. LEWIS BLACKFORD.

DISTRICT OF COLUMBIA, }
County of Washington, } *ss:*

I, B. Lewis Blackford, a notary public in and for the district & county aforesaid, do hereby certify that Maria W. Mattoon, party to a certain deed bearing date on the fourth day of January, A. D. 1875, and hereto annexed, personally appeared before me in the district aforesaid, the said Maria W. Mattoon being personally well known to me, to be the person who executed the said deed, and acknowledged the same to be her act and deed.

Given under my hand and notarial seal, this fourth day of January, A. D. 1875.

[SEAL.] B. LEWIS BLACKFORD,
Notary Public.

52 Endorsement: Exhibit (F). Copy. This is to certify that the within is a true and verified copy of a deed as recorded in liber No. 769, folio 477 *et seq.*, one of the land records for the District of Columbia. Washington, D. C., June 30, 1880. Seal. Geo. F. Schayer, dep. recorder.

She has paid no part of the principal of said debts, which are still subsisting leins upon said property.

8. The said property is also subject to liens for about $1,000 for general and special taxes.

9. The entire property rents for about $800 per year, which will but little more than pay the interest on the encumbrance, insurance, taxes, and repairs.

10. The husband of complainant is insolvent and has no property whatever, and he has been out of employment a long time until recently, when he obtained a temporary clerkship in one of the departments at $100 per month.

11. The defendant McGrew pretends to be the holder of a judgment against her husband, the said Calvin S. Mattoon, rendered in this honorable court, on the law side thereof, on the 4th day of November, 1875, and he has caused execution to be issued out of said court on said judgment, directed to the marshal of said District, and the said McGrew has directed and caused the defendant, Frederick Douglas, who is the marshal of said district, to levy said execution upon all the right, title, claim, and interest of the husband of complainant in her said separate property, although the said McGrew well knew that the legal and equitable title to said property is in the complainant, and that the said Calvin S. Mattoon has no interest or rights of any kind therein whatever; and the said marshal advertised the said pretended interest of said Calvin S. Mattoon for sale, and was proceeding to sell the same, when he was enjoined from making said sale by this honorable court. A copy of the said advertisement is attached to the 1st amended bill in this cause, and is referred to as a part hereof.

10. The complainant further says that the said McGrew, on the 9th day of April, 1879, filed a bill in this honorable court against the said Calvin S. Mattoon and the complainant in the nature of creditor's bill, seeking to subject plaintiff's said separate estate to the payment of the said judgment, claiming that in equity the said Calvin S. Mattoon was the owner thereof. The plaintiff took testimony, and upon the hearing of the said cause a final decree was rendered by this honorable court, special term, dismissing the said bill in said cause 6722, and the proceedings and decree still remaining on the file of this honorable court are respectfully prayed to be taken as part of this bill.

11. In case the court should be of opinion that the said Calvin S. Mattoon has any interest in complainant's said separate property by reason of his relation to her as her husband that may be sold upon execution for his debts or in any other way subjected thereto, this honorable court will make to her such provisions for her support and maintenance out of said property as will be just and equitable.

Prayer.

Complainant prays that the defendant McGrew may be required to answer this amended bill without oath, and that on the final hearing hereof he may be perpetually enjoined from further attempt-

ing to sell, or cause to be sold, or in any way appropriated or subjected to the payment of his said judgment, the pretended marital right or interest of the said Calvin S. Mattoon in her said separate estate, and for such other and further relief as may be necessary.

S. S. HENKLE, *Sol'r.*

57 *Answer of John S. McGrew. Filed Jan.* 12, 1881.

In the Supreme Court of the District of Columbia.

MARIA W. MATTOON *vs.* JOHN S. MCGREW. } In Equity. No. 7001.

The answer of the defendant, John S. McGrew, to the said bill of complaint.

The said defendant answering, says:

I. The complainant intermarried with her husband, Calvin S. Mattoon, on the twenty-third of April, 1844.

II. In May, 1867, and January, 1868, the legal titles of the parcels of land described in the second paragraph of the bill were conveyed to the complainant in fee-simple by Hassler and wife and Adams and wife by deeds duly recorded in the land office of this District. The deeds declare no trusts nor equities in regard to the said lands, but vest the title in the complainant, free from any separate
58 use, equity, or trust.

III. The defendant, on information and belief, denies that the said Maria W. Mattoon has or ever had any married woman's separate use or trust or equity in the said land, or in the means wherewith the same was bought, and says, on information and belief, that the said Maria W. Mattoon was owner of the said means free of any such separate use, and is the owner of said land free of any such use.

IV. The defendant denies that he had any notice before the bringing of this bill that the complainant had or has any separate use, equity, or trust in the said lands.

V. In March, 1875, the defendant lent three thousand five hundred and seventy dollars ($3,570.00) to the complainant's husband on his bill of exchange drawn on the complainant, which bill
59 having been refused payment by complainant, the defendant recovered judgment thereon in the said sum and charges, and interest, in this court against the complainant's husband, and has sued out execution thereon, and has caused the marshal to levy on the said parcels of land, and directed him to sell the legal interest of the complainant's husband therein, and he says he has dealt in good faith in the premises.

VI. The defendant heretofore filed his bill in this court to set aside the said conveyances, on the grounds that the property really belonged to the complainant's husband, but the said suit had no relation to the matters in controversy in this one.

VII. The defendant says that, inasmuch as the equities and trusts

alleged by the complainant relate to the land, they are void, because the same is not proved and manifested by any writing.

60 VIII. The defendant admits the allegations of the said bill, save in so far as they are hereinbefore denied.

And he prays to be hence dismissed, with his reasonable costs.

JAMES LOWNDES,
Defendant's Sol'r.

61 *Order for Hearing in Gen. Term. Jan'y* 12, 1881.

Supreme Court of the Dist. of Columbia. In General Term, January 12, 1881.

MARIA W. MATTOON
vs.
JOHN S. MCGREW *et al.* } No. 7001.

On motion of complainant's solicitor, and with the consent of the defendants, it is ordered that the order made in this cause on December 10th, 1880, be vacated, and that the complainant have leave to file an amended bill and the defendant McGrew to file an amended answer, and the answer of defendant Douglass stand as his answer to the amended bill. It is further ordered, on motion of complainant's solicitor, that on the filing of the amended bill and answer the cause stand for hearing on bill and answer. It is further, on motion of complainant's solicitor and with consent of the defendants, ordered that the cause be heard in the first instance in the general term.

62 *Decree Affirming Decree of Special Term. Filed Jul.* 8, 1881.

In the Supreme Court of the District of Columbia.

MATTOON
vs.
MCGREW *et al.* } Eq. No. 7001.

This cause came to be heard on the bill, answer, and exhibits, and was argued by counsel; on consideration whereof it is this 8th day of July, 1881, ordered, adjudged, and decreed that the decree of the special term dismissing the bill be, and the same is hereby, approved and affirmed, and that the said bill be dismissed, and that the plaintiff pay the costs of this suit; and thereupon the plaintiff in open court prays an appeal to the Supreme Court of the United States, which is allowed, and the bond fixed at five hundred ($500.00) dollars.

By the court: A. WYLIE.

63 In the Supreme Court of the District of Columbia. The 1st day of July, 1881.

MARIA W. MATTOON
vs.
JOHN S. MCGREW and FREDERICK DOUGLASS. } No. 7001. Equity Docket 20.

Know all men by these presents, that we, Maria W. Mattoon,

principal, and Hezekiah S. Bundy, surety, are bound unto the above-named John S. McGrew in the sum of five hundred dollars, to be paid to the said John S. McGrew, his executors or administrators. To which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our, and each of our, heirs, executors, and administrators, firmly by these presents. Sealed with our seals, and dated this 1 day of July, 1881.

Whereas the above-named Maria W. Mattoon has prosecuted her appeal to the Supreme Court of the United States to reverse the decree rendered in the above suit by the said supreme court of the District of Columbia:

Now, therefore, the condition of this obligation is, that if the above-named Maria W. Mattoon shall prosecute her said appeal to effect, and answer all damages and costs if she shall fail to make good her plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

Sealed and delivered in presence of—

HEZEKIAH S. BUNDY. [SEAL.]

I consent to this bond.

JAMES LOWNDES,
Att'y for McGrew.

Approved:
W. S. COX, *Justice.*

64 *Authentication of Record.*

CLERK'S OFFICE, SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Clerk's Certificate.

I, R. J. Meigs, clerk of the said court, do hereby certify that the writings annexed to this certificate are true copies of originals on file and of record in said office, and that said originals, together, constitute the record of the proceedings of said court in this cause.

Witness my hand and the seal of said court this 15th day of October, 1881.

[SEAL.] R. J. MEIGS, *Clerk,*
By M. A. CLANCY,
Assistant Clerk.

Justice's Certificate.

I, David K. Cartter, chief justice of said court, do certify the foregoing attestation by R. J. Meigs, clerk of the said court, to be in due form.

Witness my hand and seal this 15th day of October, 1881.

D. K. CARTTER, [SEAL.]
Chief Justice.